

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Parts 122, 123, 124, and 125

[FRL 1453-5]

Consolidated Permit Regulations: RCRA Hazardous Waste; SDWA Underground Injection Control; CWA National Pollutant Discharge Elimination System; CWA Section 404 Dredge or Fill Programs; and CAA Prevention of Significant Deterioration

AGENCY: Environmental Protection Agency (EPA).

ACTION: Final rule.

SUMMARY: This rule establishes consolidated permit program requirements governing the Hazardous Waste Management program under the Resource Conservation and Recovery Act (RCRA), the Underground Injection Control (UIC) program under the Safe Drinking Water Act (SDWA), the National Pollutant Discharge Elimination System (NPDES) program and State Dredge or Fill ("404") programs under the Clean Water Act (CWA), and the Prevention of Significant Deterioration (PSD) program under the Clean Air Act, for three primary purposes:

(1) To consolidate program requirements for the RCRA and UIC programs with those already established for the NPDES program.

(2) To establish requirements for State programs under the RCRA, UIC, and Section 404 programs.

(3) To consolidate permit issuance procedures for EPA-issued Prevention of Significant Deterioration permits under the Clean Air Act with those for the RCRA, UIC, and NPDES programs.

DATES: These regulations shall become effective as follows: All regulations shall become effective as to UIC permits and programs July 18, 1980, but shall not be implemented until the effective date of 40 CFR Part 146. All regulations shall become effective as to RCRA permits and programs November 19, 1980. Part 124 shall become effective as specified in § 124.21. All other provisions of the regulations shall become effective July 18, 1980. For purposes of judicial review under the Clean Water Act, these regulations will be considered issued at 1 p.m. eastern time on June 2, 1980; see 45 FR 26894, April 22, 1980. In order to assist EPA to correct typographical errors, incorrect cross-references, and similar technical errors, comments of a technical and nonsubstantive nature on the final regulations may be submitted on or before July 18, 1980. The effective

date will not be delayed by consideration of such comments.

Comments on the scope and applicability of Executive Order 11990 and Executive Order 11988 to RCRA, UIC, and NPDES permits must be submitted on or before July 18, 1980.

Comments on requirements for Class IV wells must be received by July 15, 1980.

There will be a hearing on the requirements for Class IV wells on July 8, 1980, from 9 a.m. to 5 p.m.

ADDRESSES: Comments of a technical and nonsubstantive nature, as well as the comments concerning the scope and applicability of Executive Order 11990 and Executive Order 11988, should be addressed to: Edward A. Kramer, Office of Water Enforcement (EN-336), U.S. Environmental Protection Agency, Washington, D.C. 20460.

Comments on requirements for Class IV wells should be addressed to: Alan Levin, Director, State Program Division (WH-550), Office of Drinking Water, Environmental Protection Agency, Washington, D.C. 20460.

The Public Hearing on Class IV wells will be held at: HEW Auditorium, 330 Independence Avenue, S.W., Washington, D.C.

FOR FURTHER INFORMATION CONTACT: Edward A. Kramer, Office of Water Enforcement (EN-336), U.S. Environmental Protection Agency, Washington, D.C. 20460, (202) 755-0750.

SUPPLEMENTARY INFORMATION:

Background

These final regulations consolidate requirements and procedures for five EPA permit programs. These regulations represent the major product of the Agency's permit consolidation initiative that began in the fall of 1978. They are based on the proposed consolidated permit regulations that were published in the *Federal Register* for comment on June 14, 1978 (44 FR 32854).

EPA program requirements and State program requirements are established for three programs:

- The Hazardous Waste Management (HWM) program under the Resource Conservation and Recovery Act (RCRA);

- The Underground Injection Control (UIC) program under the Safe Drinking Water Act (SDWA);

- The National Pollutant Discharge Elimination System (NPDES) program under the Clean Water Act (CWA); and

State program requirements only are established for:

- State section 404 "Dredge or Fill" programs under the CWA.

In addition, procedures for permit decisionmaking are established for the above four programs, and for

- The Prevention of Significant Deterioration (PSD) program under the Clean Air Act, where this program is operated by EPA or a delegated State agency under 40 CFR 52.21(v); these procedures do not apply to PSD permits issued by States to whom administration of the PSD program has been transferred. (See preamble to Part 124, Subpart C.)

These regulations are an important element of an Agency-wide effort to consolidate and unify procedures and requirements applicable to EPA and State-administered permit programs.

The Agency has also developed a single set of permit application forms for the programs covered by these regulations. These consolidated application forms are published elsewhere in today's *Federal Register*. They consist of a single general form to collect basic information from all applicants, followed by separate program-specific forms which collect additional information needed to issue permits under each program. The application forms in today's *Federal Register* include the general information form and the additional forms for certain water discharges under NPDES and for hazardous waste permits under RCRA.

When the draft consolidated application forms were published for public comment, they appeared along with a set of proposed NPDES regulations which were closely related to the contents of the application forms. Those accompanying regulations have now been integrated with the final NPDES regulations which appear as part of these consolidated permit regulations, and are summarized in the proper places in the preamble discussion. For a more thorough discussion and response to comments on those portions of the NPDES regulations, see the preamble to the consolidated application forms published elsewhere in today's *Federal Register*. Because the draft application forms and accompanying proposed NPDES regulations were originally published together, commented upon together, and are closely related, the detailed discussion of both forms and accompanying regulations has been retained in one place.

Many of the requirements in these regulations apply both to EPA programs and to State programs that receive EPA approval to operate in lieu of a Federal program in a particular State. These common requirements are intended to ensure that State permit programs satisfy minimum statutory and

Third, the procedure for EPA Headquarters review of EPA issued draft general permits, proposed in § 124.7(a)(2) and the comment following § 122.82(a), has been shortened to allow EPA 30 days rather than 80 to review and raise objections to the draft permit (final § 124.58).

Fourth, the proposal (§ 122.83(e)(2)) stated that the Director could revoke a general permit as it applied to an individual discharger and require that discharger to obtain an individual permit, but EPA could do this only after an on-site inspection. The requirement for an on-site inspection has been deleted because the causes for requiring an individual permit (examples are listed in § 122.59(b)(2)(i)) can be adequately determined without an inspection.

Fifth, the sources other than separate storm sewers that may be covered by a general permit are no longer limited to "minor" sources, so long as the category specified in the permit meets the requirements of § 122.59(a)(2).

Finally, § 122.59(b)(2)(iv) clarifies that the general permit automatically terminates on the effective date of an individual permit.

§ 122.60 Additional conditions applicable to all NPDES permits.

§ 122.60(a)(1) states the duty of the permittee to comply with toxic effluent standards or prohibitions regardless of whether they appear in the permit. This requirement formerly appeared as a comment to proposed § 122.68(b).

Section 122.60(b) (proposed § 122.68(e)): The proposal required a permittee to control production and all discharges upon reduction, loss, or failure of the treatment facility, until the facility is restored or an alternate method of treatment provided. Some commenters argued that this requirement to control both production and discharges was burdensome and that some flexibility should be allowed based on the degree of noncompliance. EPA agrees in part and has revised § 122.60(b) to require a permittee to control either production or all discharges rather than both. However, if the circumstances warrant the permittee may still be required to control both production and all discharges.

Portions of paragraphs (d) through (h) of proposed § 122.71 have been moved to § 122.60. These monitoring requirements are mandatory for all permittees and as such properly appear in the standard NPDES permit conditions. They are discussed under § 122.62(i) below.

Section 122.60(f) contains the 24-hour reporting requirements for NPDES. This

paragraph is intended to coordinate with the reporting requirements under § 122.7(i). The proposal required 24-hour reporting of unanticipated bypasses if the permittee wished for the bypass not to be "prohibited." This requirement has been coordinated with the 24-hour reporting duties and therefore now applies in all instances regardless of whether the bypass will be "prohibited." Similarly, in the proposal upset only had to be reported if the permittee wished to establish an affirmative defense to an enforcement action for noncompliance. This 24-hour reporting duty has now also been coordinated with the other 24-hour reporting duties and is mandatory in all instances where the upset causes any effluent limitation in the permit to be violated. Finally, the Director may now specify in the permit any other pollutant which he or she wishes to be reported within 24 hours if a maximum daily discharge limitation is violated.

Section 122.60(g) contains provisions covering bypass. The paragraph has been extensively redrafted for clarity. In general, the paragraph now clarifies that bypass which causes violation of effluent limitations is prohibited; the proposal appeared to place the presumption in favor of approval of a bypass. Consequently, ten day advance notice of any anticipated bypass which may violate effluent limitations is now a requirement in all cases, and not simply an optional mechanism for obtaining "approval" of an otherwise prohibited bypass. Similarly, EPA has deleted the statement in proposed § 122.68(c)(3) that "if there is any doubt" as to the necessity for the discharge, enforcement action may be taken. Finally, the reorganized section clarifies the applicability of the requirement that backup equipment be available to prevent bypass. In general, bypass will not be excused except in extreme situations, and the lack of adequate backup equipment for downtime periods will not be a defense unless the permittee could not have anticipated the need for such equipment at the time the facility was constructed. Similarly, although in general bypass which does not exceed effluent limitations is not prohibited, this is true only if the bypass also was necessary for essential maintenance.

§ 122.61 Additional conditions applicable to specified categories of NPDES permits.

(1) Section 122.61(a) requires existing industrial permittees to notify the Director when some activity has occurred or will occur, causing them to discharge toxic pollutants at a level

exceeding five times the level reported in the permit application. Permittees must also notify the Director if they begin to use or manufacture a toxic pollutant which they did not report in the permit application. This requirement has been changed from the proposal (§ 122.68(a) in Part III of the June 14, 1979 Federal Register (44 FR 34393)) which established permit limits at five times the reported level or detection limit. In response to a large number of comments on this section, EPA has changed its approach towards controlling pollutants not limited in permits. A detailed discussion of the new section and the comments received on the proposal appears elsewhere in today's Federal Register in the preamble to the public notice of the consolidated application forms.

(2) Section 122.61(b) specifies conditions applicable to all POTWs. They were proposed as § 122.69(d)(1), in the section titled "Applicable limitations, standards, prohibitions, and conditions." Rather than leaving them as requirements for permit writers to specify on a case-by-case basis, they were moved, without substantive change, to this section because they are applicable to all POTWs.

§ 122.62 Establishing NPDES permit conditions.

(1) We have divided proposed § 122.69(a), which listed required limitations, into two paragraphs, § 122.62(a) and (b). Section 122.62(a) contains requirements for technology-based limitations, to be imposed either on the basis of guidelines or case-by-case under § 125.3. It also specifies requirements concerning new source performance standards which were proposed as § 122.69(c).

(2) Section 122.62(c) modifies the proposed § 122.69(b) by deleting the four dates in proposed Appendix A (September 30 and December 31, 1980 and March 31 and June 30, 1981) and replacing them by a single date identified in the text of § 122.62(c), which is June 30, 1981. Any permit issued on or before June 30, 1981 to any dischargers in an industrial category listed in Appendix A must contain a reopener clause as provided in this section. This will ensure incorporation of the requirements of effluent guidelines into permits issued to these dischargers. Any permit issued after June 30, 1981 to these dischargers must meet the requirements of sections 301(b)(2) (A), (C), (D), (E), and (F) of the Clean Water Act, whether or not applicable effluent limitation guidelines have been promulgated for those industries.

condition implementing sections 301, 302, 306, 307, 308, 318, or 405 of the Clean Water Act is subject to a civil penalty not to exceed \$100,000 per day of such violation. Any person who willfully or negligently violates permit conditions implementing sections 301, 302, 306, 307, or 308 of the Clean Water Act is subject to a fine of not less than \$2,500 nor more than \$25,000 per day of violation, or by imprisonment for not more than 1 year, or both.

(b) In addition to § 122.7(c) (duty to halt or reduce activity), upon reduction, loss, or failure of the treatment facility, the permittee shall, to the extent necessary to maintain compliance with its permit, control production or all discharges or both until the facility is restored or an alternative method of treatment is provided. This requirement applies, for example, when the primary source of power of the treatment facility fails or is reduced or lost.

(c) In addition to § 122.7(j) (monitoring):

(1) Monitoring must be conducted according to test procedures approved under 40 CFR Part 136, unless other test procedures have been specified in this permit.

(2) The Clean Water Act provides that any person who falsifies, tampers with, or knowingly renders inaccurate any monitoring device or method required to be maintained under this permit shall, upon conviction, be punished by a fine of not more than \$10,000 per violation, or by imprisonment for not more than 6 months per violation, or by both.

(d) In addition to § 122.7(k) (signatories): the Clean Water Act provides that any person who knowingly makes any false statement, representation, or certification in any record or other document submitted or required to be maintained under this permit, including monitoring reports or reports of compliance or non-compliance shall, upon conviction, be punished by a fine of not more than \$10,000 per violation, or by imprisonment for not more than 6 months per violation, or by both.

(e) In addition to § 122.7(l)(3) (monitoring reports):

(1) Monitoring results must be reported on a Discharge Monitoring Report (DMR).

(2) If the permittee monitors any pollutant more frequently than required by the permit, using test procedures approved under 40 CFR 136 or as specified in the permit, the results of this monitoring shall be included in the calculation and reporting of the data submitted in the DMR.

(3) Calculations for all limitations which require averaging of

measurements shall utilize an arithmetic mean unless otherwise specified by the Director in the permit.

(f)(1) The following shall be included as information which must be reported within 24 hours under § 122.7(i)(5) (24-hour reporting):

(i) Any unanticipated bypass which exceeds any effluent limitation in the permit. (See § 122.60(g) below.)

(ii) Any upset which exceeds any effluent limitation in the permit.

(iii) Violation of a maximum daily discharge limitation for any of the pollutants listed by the Director in the permit to be reported within 24 hours. (See § 122.62(g).)

(2) The Director may waive the written report on a case-by-case basis if the oral report has been received within 24 hours.

(g) *Bypass*—(1) *Definitions*. (i) "Bypass" means the intentional diversion of waste streams from any portion of a treatment facility.

(ii) "Severe property damage" means substantial physical damage to property, damage to the treatment facilities which causes them to become inoperable, or substantial and permanent loss of natural resources which can reasonably be expected to occur in the absence of a bypass. Severe property damage does not mean economic loss caused by delays in production.

(2) *Bypass not exceeding limitations*. The permittee may allow any bypass to occur which does not cause effluent limitations to be exceeded, but only if it also is for essential maintenance to assure efficient operation. These bypasses are not subject to the provisions of paragraphs (g)(3) and (g)(4) of this section.

(3) *Notice*—(i) *Anticipated bypass*. If the permittee knows in advance of the need for a bypass, it shall submit prior notice, if possible at least ten days before the date of the bypass.

(ii) *Unanticipated bypass*. The permittee shall submit notice of an unanticipated bypass as required in paragraph (f) of this section (24-hour notice).

(4) *Prohibition of bypass*. (i) Bypass is prohibited, and the Director may take enforcement action against a permittee for bypass, unless:

(A) Bypass was unavoidable to prevent loss of life, personal injury, or severe property damage;

(B) There were no feasible alternatives to the bypass, such as the use of auxiliary treatment facilities, retention of untreated wastes, or maintenance during normal periods of equipment downtime. This condition is not satisfied if the permittee could have installed adequate backup equipment to

prevent a bypass which occurred during normal periods of equipment downtime or preventive maintenance; and

(C) The permittee submitted notices as required under paragraph (g)(3) of this section.

(ii) The Director may approve an anticipated bypass, after considering its adverse effects, if the Director determines that it will meet the three conditions listed above in paragraph (g)(4)(i) of this section.

(h) *Upset*—(1) *Definition*. "Upset" means an exceptional incident in which there is unintentional and temporary noncompliance with technology-based permit effluent limitations because of factors beyond the reasonable control of the permittee. An upset does not include noncompliance to the extent caused by operational error, improperly designed treatment facilities, inadequate treatment facilities, lack of preventive maintenance, or careless or improper operation.

(2) *Effect of an upset*. An upset constitutes an affirmative defense to an action brought for noncompliance with such technology-based permit effluent limitations if the requirements of paragraph (h)(3) of this section are met. No determination made during administrative review of claims that noncompliance was caused by upset, and before an action for noncompliance, is final administrative action subject to judicial review.

(3) *Conditions necessary for a demonstration of upset*. A permittee who wishes to establish the affirmative defense of upset shall demonstrate, through properly signed, contemporaneous operating logs, or other relevant evidence that:

(i) An upset occurred and that the permittee can identify the specific cause(s) of the upset;

(ii) The permitted facility was at the time being properly operated; and

(iii) The permittee submitted notice of the upset as required in paragraph (f) of this section (24-hour notice).

(iv) The permittee complied with any remedial measures required under § 122.7(d).

(4) *Burden of proof*. In any enforcement proceeding the permittee seeking to establish the occurrence of an upset has the burden of proof.

§ 122.61 Additional conditions applicable to specified categories of NPDES permits.

(Applicable to state NPDES programs, see § 123.7.)

The following conditions, in addition to those set forth in § 122.7 and § 122.60, apply to all NPDES permits within the categories specified below:

TABLE VII

RELATIONSHIP OF JUNE 7 PART 122 TO TODAY'S REGULATIONS
(Continued)

<u>June 7 Paragraph Number</u>	<u>Subject and Any Changes</u>	<u>Today's Paragraph Number(s)</u>
\$122.14(e)	Reporting requirements. No longer tied to causes for modification; causes spelled out individually; Director's right to request application in modification (\$124.5)	\$122.7(1)
\$122.14(f)	Right of entry, copying, etc. Minor wording changes	\$122.7(i)
\$122.14(g)	Operate efficiently. Added: requires backup equipment only to comply with permit; minor wording changes	\$122.7(e)
\$122.14(h)	Noncompliance reporting. Extensively rearranged, some substantive changes. Added: permits must specify 24-hr. pollutants, others not reported; planned changes and anticipated non-compliance in advance	\$122.7(1)(2), (1)(6), (1)(7), \$122.60(f)(3), \$122.62(g)
\$122.14(i)	Duty to minimize impact of noncompliance. Minor wording changes	\$122.7(d)
\$122.14(j)	Duty to halt activities. In \$122.7; not a defense against enforcement, \$122.60; minor wording changes	\$122.7(c), \$122.60(b)
\$122.14(k)	Bypass. Rearranged, no substantive change	\$122.60(g)
\$122.14(l)	Upset. Comment partially incorporated, no substantive change	\$122.60(h)